

In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 130.2075. (This is a GIL).

November 29, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated September 2, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I recently contacted you on August 12, 1999 regarding our obligation to pay use tax on materials used when we act as a subcontractor to an organization that gives us a Manufacturers Resale Certificate.

You faxed me regulations Title 86 Part 130 Section 130.2075 Sales to Construction Contractors.

Based on Sub Section A, paragraph 4, and Sub Section B, paragraph 1, I still feel that we are exempt from paying use tax on materials used.

An example of a transaction that seems to demonstrate my assertion is the following:

We act as a subcontractor to COMPANY to connect (hook up) equipment already in place. We supply labor, piping, and various materials needed to operate the equipment (coolers/freezers).

COMPANY gives us a Uniform Sales & Use Tax Certificate, identifying themselves as a Manufacturer. This certificate states 'I certify that if any property so purchased tax free is used or consumed by the firm as to make it subject to a Sales or Use Tax we will pay the tax directly to the

proper taxing authority when state law so provides or inform the seller for added tax billing.'

I have been advised by COMPANY that they pay all taxes for the construction to the state of Illinois.

I would appreciate a review of our current situation and would request a Legal Ruling to determine our liability in the scenario stated above.

Please acknowledge receipt of this document by returning the attached form.

We do not have sufficient information regarding the nature of your activities to provide a specific response. However, we hope the following information is useful. In situations like those described in your letter, two possible tax liabilities exist: 1) You are acting as a construction contractor and owe Use Tax on the cost price of the items you permanently affix to real property; 2) You are a serviceman who is most likely unregistered and de minimis and therefore you owe Use Tax to your supplier on the cost price of the items you transfer incident to your sale of service. I have included a discussion on these two most likely scenarios below. I have also included information on the other methods by which servicemen are assessed tax.

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. The term "construction contractors" includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term "contractor" means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, they must self-assess their Use Tax liability and pay it directly to the Department. If coolers are permanently affixed to real estate and subcontractors attach piping and other items to such coolers, the subcontractors owe Use tax on the cost price of the materials so affixed.

In contrast, contractors incur Retailers' Occupation Tax upon the sale of items that are not permanently affixed to real estate. Construction contractors who sell tangible personal property must either pay tax or document an exemption.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen are registered and remit Service Occupation Tax on a regular basis. They provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. Upon selling their product, they are required to collect the corresponding Service Use Tax from their customers.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of

pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

You mentioned the manufacturing exemption. This exemption is described in the enclosed regulation, 86 Ill. Adm. Code 130.330. If the exemption applies, contractors that permanently affix tangible personal property to real estate can receive a pass through of the exemption and purchase the items tax-free. Servicemen may get a pass through if they utilize methods 1, 2, or 3 above. Because servicemen utilizing method 4 pay Use Tax to their supplier, they are unable to receive a pass through of exemptions at this time.

Contractors and servicemen accepting a pass through exemption should receive an exemption certificate containing the information set forth in the regulation. They should retain this information in order to document the tax-exempt sale.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

ST 99-0359-GIL  
Page 5  
November 29, 1999

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.